

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1974

SPONSOR: Committee on Judiciary and Senator Campbell

SUBJECT: Guardian ad litem services

DATE: April 16, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u> </u>	<u> </u>	<u>CF</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AAV</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill provides for the transfer, oversight and administration of locally-based guardian ad litem programs and the attorney ad litem pilot program from the auspice of the judicial branch to the newly created Statewide Guardian Ad Litem Office to be housed administratively within Judicial Administrative Commission. The bill sets forth the Office's duties including program oversight, the provision of technical support, training, and program development. An executive director, appointed by the Governor, will head the office. The Office is required to submit specified reports to the Legislature, the Governor and the Florida Supreme Court.

This bill creates yet undesignated sections of law.

II. Present Situation:

Guardian Ad Litem Programs

There are currently 21 guardian ad litem programs in the state, operating as a part of the judicial branch. Guardian ad litem programs evolved out of the need for representation of children in court proceedings, particularly those involving child abuse and neglect matters.¹ In 1980, Florida developed a volunteer guardian ad litem pilot program to provide children with best interest representation and advocacy. By 1990, GAL programs were established in all judicial circuits.

¹ In 1974, the federal government enacted Child Abuse Prevention and Treatment Act (CAPTA) and acknowledged therein the importance of representing children's best interests by requiring the appointment of a guardian ad litem in all proceedings involving child abuse and neglect. Florida, in turn, enacted the 1978 Comprehensive Abuse of Children or Disabled Persons Act that codified the court's authority to appoint GALs and required appointment of a guardian ad litem in all dependency proceedings with abuse allegations. In 1979, the legislature appropriated funds to the Office of the State Courts Administrator for the development of a model representation program. Florida chose to replicate a national model implemented in Washington State, which combined trained volunteers with program staff to serve as guardians ad litem.

These local GAL programs are funded through various sources including state general revenue, county general revenue, Family Court Trust Fund, Voices for Children Foundation, and other grants or donations. Counties currently provide office space to all of the GAL program offices. Some counties provide additional FTE's and additional funding. Total funding is estimated at \$12.6 million dollars.² The level of charitable donations to GAL programs is unknown.

The GAL programs are governed by standards adopted by the Florida Supreme Court. However, these programs are decentralized in administration and lack uniformity. The chief judge in each judicial circuit supervises daily program functions. Generally, each program has a state funded director, at least one state-funded attorney and case coordinators, some of whom are unpaid, who oversee the work of the volunteer guardians ad litem. Staff attorneys provide legal assistance as needed. GAL programs currently employ 344 FTE's for FY 2002-2003 including case coordinators, attorneys, support staff, and administrative staff.

There are currently an insufficient number of volunteers to meet the demands for guardians ad litem.³ Guardians ad litem are required to be appointed in a number of proceedings under chapter 39, F.S. *See e.g.*, s. 39.402, and rule 8.305, Florida Rules of Juvenile Procedure. Guardians ad litem are provided in approximately 7,900 of the 12,500 cases involving dependency. Guardians ad litem are also appointed on a case-by-case basis involving matters of delinquency and family law. Most guardian ad litem programs provide representation at government expense. Generally, no inquiry is made as to the ability of the parents to pay for the guardian ad litem representation. The GAL volunteers are typically not attorneys. According to figures provided the Office of State Courts Administrator, 4,701 volunteers donated 666,585 hours of service to the programs statewide during the 2001 calendar year. A GAL volunteer has the following responsibilities:

- To investigate the allegations of the dependency petition and file a written report which must include a statement of the child's wishes, and the GAL recommendations;
- To be present at all court hearings unless excused by the court; and
- To represent the best interests of the child.⁴

Attorney Ad Litem Pilot Program

In 2000, the Legislature provided for the creation of a 3-year Attorney ad Litem Pilot Program in the Ninth Judicial Circuit, to be established by the Office of the State Courts Administrator which is the administrative arm of the Florida Supreme Court.⁵ Effective October 1, 2000, the pilot project has three components: the GAL component provided by the Osceola County GAL program modeled after the state program; the GAL component provided by the Legal Aid Society of the Orange County Bar Association; and the attorney ad litem component provided by Barry University School of Law. The Osceola County GAL Program is the only fully funded

² Estimated Guardian Ad Litem Program funding broken down as follows: General Revenue (\$7,271,647); County Revenue (\$3,100,000); Family Court Trust Fund (\$696,500); Voices for Children (\$692,500); 9th Cir. Pilot Project (\$535,000) and Other (\$350,000).

³ A guardian ad litem is defined to include a certified guardian ad litem program, a duly certified volunteer, a staff attorney, a contract attorney, or a certified pro bono attorney working on behalf of a guardian ad litem or the program; a staff member of a program office, a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided by law. Such guardian ad litem is a party to any judicial proceeding as a representative of the child, and serves until discharged by the court.

⁴ *See* s. 39.807, F.S.

⁵ *See* s. 39.4086, F.S.

GAL program in Florida, and uses a blended model of representation. The primary differences between the traditional GAL model and the attorney ad litem model is that in the traditional GAL model, a lay volunteer provides advocacy for the dependent child and is required to provide the court with a report that includes an independent assessment of the child's *best interests* and the child's wishes. The GAL staff attorney provides legal assistance for a small percentage of cases in which the lay volunteer requires legal assistance. Conversely, the attorney ad litem model provides an attorney for the dependent child, who represents the child's *legal interest* subject to his or her direction.⁶

Transfer of GAL Programs

Recent impetus for transferring the GAL programs out of the judicial branch is based on two primary reasons. First, current placement within the judicial branch creates actual and perceived conflicts of interest. The chief judge in each circuit is responsible for managing program staff and operations. However, issues of potential conflict of interest or favoritism governing a guardian ad litem who must report to the court have been raised.⁷ Second, Revision 7 to Article V of the *Florida Constitution* directs state government to assume the cost of the state court system, to be fully effectuated by July 1, 2004. The Legislature is in the process of defining the state court system to determine which programs and services are part of the state court system to be paid for by the state and which are to be paid or provided at the local level.

Several alternatives for placement were considered, including the creation of an independent office within the judicial branch, the public defenders' offices⁸, an agency within the executive branch, and a not-for-profit organization. Ultimately, both OPPAGA and the Governor's Guardian ad Litem Working Group recommended placement in the Justice Administrative Commission.⁹ OPPAGA reports that making the GAL program independent, and administratively served by the Judicial Administrative Commission, seems to be the second least expensive option (after leaving the GAL program in the Office of the State Courts Administrator) and would resolve concerns over conflict of interest and centralization.

The Justice Administrative Commission (JAC)

The JAC was statutorily created to provide administrative services and assistance to the offices of the state attorneys, the public defenders, the Capital Collateral Representatives, and the Judicial Qualifications Commission.¹⁰ Members of the JAC consist of two state attorneys selected by the Florida Prosecuting Attorneys Association and two public defenders selected by the Florida Public Defenders Association. The Commission employs an executive director to run the day-to-day business of the JAC.

⁶ See *The Final Report of the Florida Bar Commission on the Legal Needs of Children*, June 2002, for an in-depth evaluation of the need for representation of a child best interest versus a child's legal interest in legal proceedings.

⁷ See OPPAGA Report No. 02-10, "Guardian ad Litem Placement May Shift for Reasons of Funding and Conflict of Interest", February, 2002.

⁸ See SB 686 (2002), which originally transferred the GAL program to the offices of the public defenders. The bill was amended to provide for transfer of the program to the Department of Elderly Affairs. CS/CS/CS SB 686 died in House Messages.

⁹ See OPPAGA Report No. 02-10 and Final Report of the Governor's Guardian ad Litem Workgroup, submitted to the Governor on September 15, 2002.

¹⁰ See s. 43.16, F.S.

III. Effect of Proposed Changes:

This bill provides for the transfer, oversight and administration of locally-based guardian ad litem programs and the attorney ad litem pilot program from the auspice of the judicial branch to the newly created Statewide Guardian Ad Litem Office to be located within Judicial Administrative Commission. Specifically, the bill provides the following

Section 1 includes legislative findings and intent regarding guardian ad litem programs regarding: 1) The singular role that guardian ad litem programs have historically played in the representation of children's best interests, 2) The perceived conflict of interest in housing these programs within the judicial branch, and 3) The need to transfer the administration of these programs to a new agency in the post-Revision 7 court system era.

This section creates the Statewide Guardian ad Litem Office ("Office") within the Judicial Administration Commission. The Governor, in consultation with the Chief Justice of the Supreme Court, is to appoint an executive director to head the Office. The executive director must have knowledge of dependency law and of social service delivery systems available to meet the needs of dependent children. The director must serve on a full-time basis, is responsible for carrying out the duties of the office, and serves at the Governor's pleasure.

The Office is directed to perform the following duties, within available resources:

- Provide oversight and technical assistance to the locally-based GAL programs and existing attorney ad litem programs;
- Identify resources required to implement methods of reliable and consistent data collection;
- Review current GAL programs in Florida and other states;
- Develop statewide performance measures and standards in consultation with local GAL offices;
- Develop a training program in consultation with a curriculum committee;
- Review the various funding methods and maximization of funding sources and uses;
- Conduct or contract for demonstration projects, within available or acquired funds, to determine the feasibility or desirability of new concepts for delivery systems and components thereof to designed to preserve the civil and constitutional rights of dependent children; and
- Continue the existing attorney ad litem projects within appropriated funds or donations to determine the feasibility of alternative or new concepts for protecting the rights of children;
- Submit by October 1, 2004, to the Governor, President of the Senate, and Speaker of the House an interim progress report, a proposed plan including alternatives for meeting the state's GAL needs, and subsequent to that report, an annual status report.

Section 2 also provides for the transfer of attorney ad litem pilot program created by s. 39.4086 from the Office of the State Courts Administrator to the Statewide Guardian ad Litem Office within the JAC. All program funds and positions transfers are facilitated by a type two transfer.

Section 3 of the bill transfers all funds and positions associated with the GAL programs in the State Court System¹¹ through a type-two transfer to the Office within the Judicial Administration Commission (JAC).¹² The JAC is required to provide administrative support and service to the Office to the extent requested by the executive director within the available resources of the commission. The Office shall not be subject to the control, supervision, or direction of the JAC in the performance of its duties.

Section 4 provides an effective date of July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill appears to have a negative recurring fiscal impact to state general revenue, commencing in FY 2003-2004, of \$0.5 million annually. The bill requires that the attorney ad litem pilot program be transferred to the Statewide Guardian ad Litem Office. In 2002, the Legislature appropriated \$1,682,102 to continue the Ninth Judicial Circuit's Attorney ad Litem Pilot Project. The State Courts System reports an operating budget the

¹¹ Letter to the Chief Justice of the Florida Supreme Court, the Honorable Charles Wells, from Judge Daniel Dawson, Chair of the Children's Court Improvement Committee, September 28, 2001. Several aspects of the program were identified as crucial to the proper representation of children in court, and integral to a transfer of the GAL program: 1) The best interests mission; 2) Independent advocacy; 3) The dedication and longevity of program staff; 4) The ability to provide information to the court; and 5) The community involvement of lay volunteers

¹² See s. 20.06(2), F.S. A type two transfer is the merging of an existing agency into another agency or department. The transfer includes all statutory powers, duties, and functions, and records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished.

GAL programs for 2002-2003 of \$16,276,480 from general revenue and \$534,442 from the Family Court Trust Fund. Additionally, \$250,000 was appropriated to the Office of the State Courts Administrator in 2002 to provide funding to prepare for the transition of the GAL program out of the Office of the State Courts Administrator. The type-two transfer should transfer all unexpended balances of these appropriations to the JAC. The Office of the State Courts Administrator reports that the Statewide Guardian ad Litem Office should be comprised of a director, two lead attorneys, two senior court analysts, an administrative assistant, and a secretary, to be funded as follows:

State Director (pay rate for Trial Court Administrator)	\$ 82,094
Staff Attorneys (x2)	\$111,127
Senior Court Analyst (x2)	\$ 91,424
Administrative Assistant I	\$ 28,071
Senior Secretary	<u>\$ 26,387</u>
TOTAL	\$339,103

Salaries were calculated using current OSCA rate plus 10%, benefits calculated as an additional 30%. Operating capital outlay (OCO) and expense for 7 employees is reported to cost an additional \$79,905.

The JAC reports that in order to provide administrative support to the Statewide Guardian ad Litem Office it will need an additional 3.0 FTE's and \$195,000 to maintain its 1 to 200 FTE ratio. The bill requires the JAC to provide administrative support within available resources.

This bill does not appear to have a fiscal impact on local governments. The bill does not address what continuing obligation, if any, the counties have to provide space and court-related services to the locally-based GAL and attorney ad litem pilot programs. Counties typically provide office space for GAL programs. Counties have reported previously that they expended approximately \$3.1 million on circuit GAL programs in 2001. *See Legal Needs of Children*, Senate Interim Project Report No. 2002-140, November, 2001. It is not clear what the impact would be on the GAL programs if the counties no longer provided office space or if the counties discontinued any funding in light of Revision 7 transition. Many GAL programs currently do not meet the demands for GAL services due to inadequate funding levels.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- The bill does not provide a date by which the executive director must be appointed although the transfer of positions and funds will take place effective July 1, 2003. The bill also does not provide a term limit for the executive director.
- The bill directs transfer of the GAL positions and funding from the Office of State Courts Administrator. More accurately, these positions and funding are actually part of the circuit courts budget entity. Secondly although the bill provides for the transfer of the attorney ad litem pilot program in the Ninth Judicial Circuit, the bill does not provide for the express transfer of positions and funding associated with that program.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
